

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 17

September 2, 2011

**SUBJECT: CALIFORNIA PENAL CODE SECTION 17(b) (4) REFERRAL
PROCEDURES - REVISED**

EFFECTIVE: SEPTEMBER 6, 2011

PURPOSE: This Order revises Department Manual Section 4/720.36, *17(b) (4) PC Referrals to the City Attorney's Office*, and deletes Section 4/720.37, *Modified 17(b) (4) PC Referral Procedures*. The new procedures were developed by the Office of the District Attorney (DA) and the Office of the Los Angeles City Attorney (CA) in cooperation with the Los Angeles County Prosecutors Association, resulting in an Inter-Agency Operational Agreement, which was entered into by the three aforementioned entities on March 4, 2011.

The Detective Operations Manual will also be revised to include the new 17(b) (4) Penal Code (PC) Referral Procedures.

The Investigator's Final Report, Form 05.10.00, will not be revised; however, use of the form with regards to *Section C, Additional Actions*, as a result of 17(b) (4) PC must be consistent with the procedures detailed in this Order.

PROCEDURE: Attached is the revised Department Manual Section 4/720.36, *17(b) (4) PC Referrals to the City Attorney's Office*, with revisions indicated in italics. These revisions ensure that all detective watch commanders/supervisors and patrol watch commanders adhere to the guidelines specified in the new Inter-Agency Operational Agreement, Penal Code 17(b) (4) Referrals, Schedule I. Under the new Agreement, the 17(b) (4) PC bypass cases listed on Schedule I (attachment), also known as "wobblers," shall be referred directly to the CA for filing, provided they meet the criteria listed on the schedule. Detective watch commanders/supervisors and patrol watch commanders will no longer have discretion to downgrade felony/misdemeanor offenses. All other wobblers not listed on Schedule I shall be reviewed by the DA and accompanied by a Los Angeles County District Attorney Charge Evaluation Worksheet when being presented to the CA for filing consideration.

Wobbler cases involving allegations of police misconduct shall be immediately forwarded by the investigating law enforcement agency to the DA's Office.

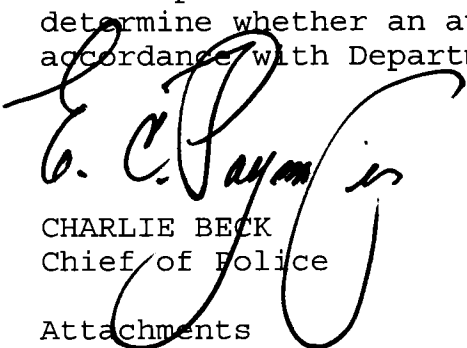
Due to the procedural changes detailed above, Department Manual Section 4/720.37, *Modified 17(b) (4) PC Referral Procedures* has been deleted.

September 2, 2011

AMENDMENTS: This Order amends Section 4/720.36 and deletes Section 4/720.37 of the Department Manual.

MONITORING RESPONSIBILITY: All commanding officers shall have monitoring responsibility for this directive.

AUDIT RESPONSIBILITY: The Commanding Officer, Internal Audits and Inspections Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



CHARLIE BECK
Chief of Police

Attachments

DISTRIBUTION "D"

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 17, 2011**

720.36 17(b)(4) P.C. REFERRALS TO THE CITY ATTORNEY'S OFFICE.

Due to procedural changes implemented by the new Inter-Agency Operational Agreement between the Office of the Los Angeles County District Attorney (DA), the Office of the Los Angeles City Attorney (CA), and the Los Angeles County Prosecutors Association, the aforementioned entities have developed new guidelines for Penal Code Section 17(b)(4) referrals outlined in the Inter-Agency Operational Agreement, Penal Code 17(b)(4) Referrals, Schedule I. Under the agreement, the 17(b)(4) PC bypass cases listed on Schedule I (attachment) also known as "wobblers," shall be referred directly to the CA for filing, provided they meet the criteria listed on the schedule. All other wobblers not listed on the schedule shall be reviewed by the DA and accompanied by a Los Angeles County District Attorney Charge Evaluation Worksheet (CEW) when being presented to the CA for filing consideration. The CEW is informally referred to as a "blue sheet" or a "reject" form. Unless otherwise defined in Schedule I of this agreement, any wobblers presented for review by a filing investigator to a CA or a City prosecutor without a CEW from the DA's Office will be immediately referred to the DA's Office for felony filing consideration.

Note: *Felony/misdemeanor offenses that do not meet all the criteria described in the Inter-Agency Operational Agreement, Penal Code 17(b)(4) Referrals, Schedule I, **shall** go directly to the DA's office for felony filing consideration.*

Wobbler cases involving allegations of police misconduct shall be immediately forwarded by the investigating law enforcement agency to the DA's Office.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(b)(4) REFERRALS

SCHEDULE I

DIRECT REFERRAL CRITERIA FOR 17(b)(4) OFFENSES

Possession of Methamphetamine (Health and Safety Code §11377)

- No prior felony convictions
- No prior misdemeanor convictions for drug related offenses within the last three years
- No evidence of sales activity connected with the current offense
- One gram or less of methamphetamine is possessed

Possession of PCP (Health and Safety Code §11377)

- No prior felony convictions
- No prior misdemeanor convictions for drug related offenses within the last three years
- No evidence of sales activity connected with the current offense.
- Three milliliters or less liquid or two "sherms" or less is possessed

Grand Theft (Penal Code §487(a))

- No prior felony convictions
- No prior misdemeanor convictions for theft or fraud related offenses within the last five years
- The theft did not involve the use of credit cards or constitute a form of identity theft
- Aggregate loss is \$2,500 or less

INTER-AGENCY OPERATIONAL AGREEMENT

PENAL CODE §17(b)(4) REFERRALS

Petty Theft with a Prior (Penal Code §666/484)

- No prior felony convictions
- No more than one prior qualifying misdemeanor theft or fraud related conviction within the last five years
- Property stolen was food or beverage, excluding liquor, valued at \$30.00 or less.

Auto Burglary (Penal Code §459, vehicle)

- No prior felony convictions
- No prior misdemeanor convictions for theft related offenses within the last five years
- Burglary of a single vehicle
- Aggregate damage is \$2,500 or less

Forgery (Penal Code §470, et.seq.)

- No prior felony convictions
- No prior misdemeanor convictions for theft or fraud related offenses within the last five years
- No indicia of identity theft (e.g., phony license, possession of multiple credit cards with different names)
- Forgery of a single document
- Aggregate value of attempted or actual theft is \$2,500 or less

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(b)(4) REFERRALS

Vandalism (Penal Code §594)

- No prior felony convictions
- No prior misdemeanor convictions for offenses involving property damage
- No indicia that the crime was motivated by gang involvement or that the crime is hate related
- Property damage is less than \$1,000

Weapon Possession (Penal Code §12020)

- No prior felony convictions
- Weapon was not used in the commission of a crime
- No prior convictions for weapons or assault crimes
- Defendant is not a gang member or associate gang member
- The weapon is not a firearm

Commercial Burglary (Penal Code §459)

- No prior felony convictions
- No more than one prior qualifying misdemeanor theft or fraud related conviction within the last five years
- Property stolen was food or beverage, excluding liquor, valued at \$30.00 or less (Redondo Beach suggestion was that value be \$400.00 or less; LAPD suggests \$2500 or less)
- No tools were used in the entry
- No electrical devices were used to defeat alarms
- No "booster bags" were used

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(b)(4) REFERRALS

Possession of a Controlled Substance (Health and Safety Code §11377/11375/11382)

- No prior felony convictions
- No prior misdemeanor convictions for drug related offenses within the last three years
- No evidence of sales activity connected with the current offense
- Quantity possessed clearly demonstrates possession for personal use

Unlawful Driving or Taking of a Vehicle (Vehicle Code §10851)

- No prior felony convictions
- No prior misdemeanor convictions for auto theft, including vehicle tampering
- The theft was not related to a criminal enterprise or chop-shop operation
- No pursuit involved in apprehension or arrest
- No significant damage to the victim's vehicle

Assault with Force Likely to Produce GBI (Penal Code §245(a) (1))[†]

- No prior felony convictions
- No misdemeanor convictions involving violence or threats of violence
- No weapon involved
- No significant injuries

[†] For cases involving family members or intimate partners, please refer to the standards for violations of 273.5 PC below.

INTER-AGENCY OPERATIONAL AGREEMENT

PENAL CODE §17(b)(4) REFERRALS

Battery on a Police Officer (Penal Code §243(c) (1), (2))

- No prior felony convictions
- No misdemeanor convictions involving violence or threats of violence
- No weapon involved
- No significant injuries

Spousal Abuse (Penal Code §273.5)[‡]

- No weapon involved – used, possessed or threatened
- No prior felony convictions
- No *significant injury* (including any loss of consciousness)[§]
 - Examples of *non-significant injuries*, include, but are not limited to:
 - minor redness,
 - swelling, minor scratches, or
 - minor bruising
 - Examples of *significant injury* include but are not limited to:
 - moderate to extensive bruising,
 - open wounds that required stitches or other medical care,
 - broken bones, and
 - petechiae
- No prior misdemeanor convictions involving violence, threats of violence, or weapons
- Less than three prior arrests for assaultive conduct

[‡] Cases contemplated by this agreement involve §273.5 PC cases in which parties who are or were married, are or were cohabitants, or have a child in common or §245(a)(1) offenses in which parties have a current or former dating relationship or are relatives currently living in the same household.

[§] If medical intervention is warranted, even if the victim declines, the case should be first seen by the District Attorney's Office.

INTER-AGENCY OPERATIONAL AGREEMENT

PENAL CODE §17(b)(4) REFERRALS

- No child present as a witness or involved in incident**
- No strangulation or attempted strangulation of victim
- No direct filing in cases where:
 - the victim is pregnant
 - the victim was particularly vulnerable (asleep, developmentally disabled, physically impaired),
 - the suspect has a history of making suicide threats,
 - the suspect has a gang affiliation,
 - the suspect previously engaged or is currently engaging in stalking behavior,
 - the suspect has threatened to abduct and/or injure children or other family members,
 - there is an injury to or threat to injure pets

Criminal Threats (Penal Code §422)

- No prior felony convictions
- No prior misdemeanor convictions involving violence or threats of violence
- No weapon was involved – used, possessed or threatened (a weapon is any instrument that can be used to inflict injury)

Unlawful Sexual Intercourse (Penal Code §261.5)

- Suspect is 20 years of age or younger
- Victim is 16 years of age or older
- Sex is consensual
- No prior felony convictions
- No alcohol or drugs involved

** See Penal Code § 273a (a) standards for further explanation.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(b)(4) REFERRALS

- No prior investigation or arrest for committing a sexual offense
- No traumatic condition in the instant case

**DIRECT FILING IS NOT AVAILABLE FOR THE
FOLLOWING CRIMES**

LADA will review all cases involving:

- Penal Code §646.9 - Stalking
- Penal Code §422.7 – Hate Crimes
- Penal Code §273a(a) – Child Endangerment
- Penal Code §273d – Corporal Punishment of a Child
- Penal Code §368 – Elder Abuse
- Penal Code §136.1 – Witness Intimidation